## Unto his Grace, His Majesties High Commissioner, and the Right Honourable the Estates of Parliament

## The Petition of JOHN ATTOUN of KINNALDIE.

Humbly Sheweth Your Prentioners Pather Doold tion thus, That in regard he was exposed to the rusting during the time of his roubles, is may be declared by your Grace and Honourable Estates of Parliament, that sourceen years may be deduced from the years of Prescrip? tion (leeing as the presence) during that time he was me volve ague. By which Conclusion of the said Petition, it is evident that the samen is contrived not so much for Rinkels reparations of his lufferings in the last Government, as for exposing your Perition ner to new sufferings underthis. Tho he may compare with him even in the last Government, being fyned in 2000 Merks, which he payed for his Ablence from Bothwel Bridge: And being put to great Expences by a Process before the Council, in declining to be a Militto copsain; immediatly before this bayer Repolation; And if fuch a General Act asthis should pals in his layours, without citting this your Petitioner against whom the main design, Scope & Aim of Richest Petition com dien your Petitioners Desence of undoubty ed prescription, is altogether frustrat and elieded, and the Matter being of great import to your Petitioner, and of a dangerous preparative to others, who may be equals ly concerned in the like cases, and might be totally ruined by such a general! Act. Therefore your Petitioner humbly beggs pardon to represent to Your Grace, and Hos nourable Eleans of Parliament, the Grounds and Realons following, why the faid Pe. tition and defire thereof cannot be granted. And, see There being a Reduction of the laid Right, depending before the Lords of Section, they are sufficient and competent Judges to decide in many of prescription, and to determine whether any years of Rights intercommunity hould be allowed; but it is a thing altogether impracticable, by fuch general Acts to anticipate the Lords of Session their Der cisions, in Processes depending before them, especially when the Parties con-2de: The reason is evident, why Kinkel all this time cerned are not called. did not insist in his foresaid Reduction because the Instrumentary witnesses in the Difposition were then living, who were present when the same was Subscrived, and knew that the disponer was in perfect health and vigour of Body; And now they having dyed within these sew years; And likewayes severall other extrinsick witnesses who were daily converting with him, therefore he takes this oportunity, knowing the difficulty



of finding a Probation in re tam antiqua; and if this had not been Kinkels delign, what hin tered him all the timethar judge Ker his brother in Law was in Power, and one of he Judges of the Nation, and an eminent Lawyer, he did not then raile a reduction, when the matter was recent, and he could not pretend he was non volens agere. 3tio. It this Disposition were reduced, it would involve your Petitioner in upwards of 60000 Merks, and although he had several pursuits against him, both for relief of Cautionries, and other Debts, against which, he defended most litigously, and wherein there were four leveral Suspentions discussed, and several grounds of Compensation founded upon; Yet never a word of this Debt, which certainly he would have done, if there had been any just ground therefore, both considering the greatness of the Summ, and Kinkells bad circumstances, his Estate being totaly ruined by Debt these many years bygone: Likeas after your Petitioner had prevailed by obtaining Decreets or the Lords; He difponed several others of his lands in my favors, in latisfaction of the summs discerned. As also your Publishers of his lands in my favors, in latisfaction of the summs discerned. As security of the new conquest, did obtain Decreers of General & special declarator against him after most litigious debates, & during all the time of the dependence of these proces-fes, there was never to much as mention made of this Reduction. 410. It the point of prescription were to be discust before the Lords of Session, before whom the Reduction isdepending. It is conceived, I that there could be no pretence why Prescription should not run, during the time Kinkel was confined to the Town and Suburbs of Edinsurgh, where he had Liberty to pals and repals for many Years, So that he being resident in Edinburgh, and never being so much as denounced for not appearing, cannot be prefumed that he was in the Terms of an Intercommuning, bur might certainly have railed a Sumonds, and given a Citation, which would undoubtedly have stooped Prescription. And in the year 1684, your Petitioner having pursued Kinkel and his Tenants before the Stewart of the Stewartry of St. Andrews, he did then Advocat the cause, & did many other Acts in the years of his pretended Intercommuning, So that in some Cales, it seems he was Valens agere, but in this Case he designed not to be, but by his cwn dilict, has undoubtedly defigned to take advantage of your Petitioner. And it is impossible, That in Law or Justice, there can be Deduction of years, that he was under the taid Imposionment, Confinement, or willful and designed lurking up and down the Countrie, occasioned chiefly by Captions, for Civil Debts, not yet payed, nor removed; And under which Captions Kinkel yet lyes, during which time nothing could hinder him to have raised a Process of Reduction against your Petitioner. By all which it is evident, That he hashad a design against your Petitioner, to bring him to unnecessary Trouble, Charges and Expences

In Respect of all which, It is Humbly craved, That my Lord Commissioner his Grace, and Honourable Estates of Parliament, would be pleased altogether to Reject the said Petition, at least the last part thereof, relating to Prescription, wherein your Petitioner is so much concerned, and the samen relating to a Process depending before the Lords of Session; Or otherwayes to allow me to be heard before any such general Act pass in Favours of Kinkel, In Case your Grace, and Honourble Estates of Parliament should think sit, to take the same n to your Constderations.

